

NATURAL RESOURCES DEPARTMENT[561]

Adopted and Filed

Pursuant to the authority of Iowa Code section 558.69, the Department of Natural Resources hereby amends Chapter 9, "Groundwater Hazard Documentation," Iowa Administrative Code.

These amendments have two purposes. The first purpose is to implement the septic tank time-of-transfer requirements adopted by the Iowa Legislature in 2008 Iowa Acts, Senate File 261. The second purpose is to provide an exemption for leases related to electronics towers and wind turbines.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 31, 2008, as **ARC 7454B**. A public hearing was held on Friday, January 23, 2009, and public comments were received through that date. One comment was received in writing and comments were received orally from one interested person at the public hearing.

The comments and the Department's responses are as follows:

1. A comment was received indicating that the Department should not require the Groundwater Hazard Statement for the recording of leases. The Department is conscious of the concern that the requirement of the Groundwater Hazard Statement in conjunction with leases can be considered overly burdensome. In 2001 the Department limited the requirement to leases with a term of five years or more. Prior to that date, the Groundwater Hazard Statement had been required for recorded leases with a term of one year or more. In this rule making, the Department exempts leases for electronics towers and wind turbines. However, the primary purpose of the Groundwater Hazard Statement is to notify buyers of property of any potential hazards located on that property. When a lessee will occupy a property for five years or more, the Department believes it is appropriate for the lessee to be aware of such hazards. In response to the comment, the Department has revised Item 1 to clarify that a lease of land does not include a lease of a portion of a building such as an apartment lease or business location within a mall or other multitenant building.

Additionally, parties are not required to record all leases. Types of leases for which a Groundwater Hazard Statement may not be necessary or appropriate (e.g., hunting leases) are also likely to be the types of leases for which recording is not deemed necessary. The Department has been unable to develop a specific list of all potential leasehold interests and therefore has determined that the adopted rule making limits the exemption appropriately.

2. A comment was received indicating that the Department should update the instructions for the Groundwater Hazard Statement form, adopted by reference herein, to list the exemptions from the on-site wastewater time-of-transfer inspection requirements. The instructions have now been updated.

3. A comment was received indicating that the Groundwater Hazard Statement form should provide an option for indicating that a time-of-transfer inspection is not needed because a building will be demolished. This option has been added to the form.

4. A comment was received indicating that the Department should provide a fillable electronic version of the form on its Web site. The Department will explore this option and make such a form available if possible. It is anticipated that the Iowa Bar Association will also develop an electronic version of the form.

These amendments are intended to implement Iowa Code section 455B.172 as amended by 2008 Iowa Acts, chapter 1033, and section 558.69.

These amendments shall become effective April 1, 2009.

The following amendments are adopted.

ITEM 1. Amend paragraph **9.1(4)"a"** as follows:

a. Any recorded lease of land which has a term of five years or more, except leases related to the construction or maintenance of cell phone, television, radio or similar electronics towers and leases related to the construction or maintenance of electricity-generating wind turbines. Leases or easements reserving rights to the future construction of the tower and wind turbine structures exempted by this

subrule are similarly exempted. A lease of land does not include a lease of a portion of a building such as an apartment lease or business location within a mall or other multitenant building.

ITEM 2. Amend subrule 9.2(1) as follows:

9.2(1) The transferor, ~~their~~ or the transferor's agent or attorney shall sign department Form 542-0960, "Groundwater Hazard Statement," which may be obtained from the department or local county recorder. An agent or attorney may sign the form for the transferor, but in doing so the agent or attorney represents that a good faith inquiry of the transferor has been made regarding the information contained in the form, and that ~~the information~~ is correct. The department hereby adopts by reference Form 542-0960, "Groundwater Hazard Statement," as amended through April 1, 2009. For all real estate transactions dated July 1, 2009, or later, a county recorder shall accept only the amended and revised form, as adopted by reference. The department authorizes the reproduction of Form 542-0960 by any person through photocopying or electronic means so long as the general format and wording are not altered in the reproduction thereof.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/25/09.